IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3727 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANUBHAI VIRABHAI BAROT

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3727 of 2001

MR BP MUNSHI for Petitioner No. 1

MR KT DAVE AGP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), District Magistrate, Amreli, vide order dated March 5, 2001, Annexure A to the petition, detained the petitioner detenu.

2. Averments made in the petition and the grounds of detention manifest that the detaining authority has considered the petitioner as a dangerous person within the meaning of Section 2 (c) of the Act as two cases for the commission of offences under the Indian Penal Code are registered against him which are pending for trial and statements of three witnesses are recorded against him. According to the detaining authority, the activities of the detenu are detrimental to the maintenance of public order, therefore, the detaining authority has exercised the powers under Section 9 (2) of the Act by not disclosing the identity of the witnesses while passing the order of detention and detained him.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the order of detention on various grounds and prayed to issue a writ, order or direction quashing and setting aside the order of detention and prayed to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Mr. Munshi, learned advocate for the petitioner, has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for exercising powers under Section 9 (2) of the Act cannot be considered as genuine. He contended that by not disclosing the identity of the witnesses whose statements are recorded in unregistered case, the right of the detenu of making effective representation to the concerned authority as envisaged under Section 22 (5) of the Constitution is infringed. Besides this, copies of some of the documents supplied to the detenu are not legible and, therefore, non-supply of the legible copies of the documents has adversely affected the right of the petitioner of making effective representation to the concerned authority. He contended that on both these counts the order of detention is vitiated. He therefore urged to allow the petition and quash and set aside the order of detention and to set the petitioner at liberty forthwith.

5. Mr. K.T. Dave, learned AGP has opposed this petition. He, however, does not dispute the factual aspect of non-supply of legible copies of the documents to the detenu on which reliance was placed by the detaining authority while passing the impugned order. Besides this he also conceded that though privilege is claimed by the detaining authority, he has not filed reply affidavit and in absence of reply affidavit, the privilege claimed by the detaining authority cannot be

said to be genuine. He therefore urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court and this Court on the law of detention.

6. I have considered the submissions advanced by the learned advocates for the parties. I have perused the averments made in the petition and the documents annexed therewith and the impugned order of detention as well as the judgments cited at the bar.

7. On having perusal of the documents, it is seen that some of the pages are illegible either because of overwriting or faint writing.

8. A similar question arose before this Court in Vikramsinh Pravinsinh Rana v. State of Gujarat, 1988 (2) GLH 414. In that case, some of the pages of the documents supplied to the detenu were not legible and this Court held that it would amount to non-communication of the grounds which has adversely affected the right of the detenu of making effective representation to the concerned authority. Therefore the order of detention was quashed and set aside.

9. Applying the above principles laid down by this Court to the facts of the present case, at the cost of repetition, be it stated that some of the pages of the documents supplied to the detenu on which reliance was placed by the detaining authority for passing the impugned order of detention are not legible and therefore it can be said that non-supply of the legible copies of the documents has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and on this ground the order of detention stands vitiated.

11. So far as the second ground of challenge is concerned, the detaining authority has recorded statements of three witnesses in an unregistered case by claiming privilege under section 9 (2) of the Act stating that the identity of the witnesses are not disclosed as they have expressed fear. It may be appreciated that the detaining authority has not filed affidavit in reply explaining as to under what circumstances identity of the witnesses are not disclosed to the detenu. Whether before the detaining authority the witnesses have expressed their fear in case of disclosure of their identity to the detenu is not forthcoming and, therefore, privilege claimed by the detaining authority cannot be considered as genuine and, therefore, on this ground also

the order of detention is vitiated.

12. In the above premise, the order of detention is vitiated and the petition deserves to be allowed.

13. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)